Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 02-525 OF 1993 AND 02-533 OF 1993
MOHD AZMI, MOHAMED DZAIDDIN FCJJ AND SHAIK DAUD JCA
25 JULY 1995

Labour Law *— Industrial Court — Award — Compensation in lieu of reinstatement — Question of whether dismissal was with just cause or excuse not considered — Award based on employer's failure to hold domestic inquiry — Outside terms of reference — Whether court committed jurisdictional error — Whether court should conduct rehearing if employer breaches natural justice — Employment Act 1955 s 14(1)(a) — Industrial Relations Act 1967 s 20(3)*

Civil Procedure *— Judicial review — High Court — Whether could interfere with findings of the Industrial Court — Whether reasonable to reduce compensation of wrongful dismissal due to employee's misconduct — Industrial Relations Act 1967 s 30(5)*

The appellant ('Wong'), an insurance claims manager in the employment of the respondent ('Hong Leong'), had been dismissed on the ground that he had misconducted himself by selling motor car wrecks, which was against the rules of Hong Leong. Thereafter, a case of wrongful dismissal was referred by the Minister to the Indusrial Court under s 20(3) of the Industrial Relations Act 1967 ('the Act'). Without considering whether Wong's misconduct could constitute sufficient cause or excuse for his dismissal, the Industrial Court concluded that Wong's dismissal was wrongful solely on the procedural ground that he had not been given a chance to be heard in any domestic enquiry, contrary to the terms of his employment contract. The Industrial Court awarded Wong compensation in lieu of reinstatement, but reduced the quantum because of Wong's misconduct. Hong Leong was aggrieved by the whole award, whilst Wong was dissatisfied with the reduced compensation. They applied to the High Court for an order of certiorari to quash the award, but both applications were dismissed. Both parties have appealed.

Held, dismissing Wong's appeal, and allowing Hong Leong's appeal to the extent of quashing the part of award which held that Hong Leong's failure to hold an inquiry rendered Wong's dismissal without just cause or excuse:

(1) In exercising judicial review, the High Court was obliged not to interfere with the findings of the Industrial Court unless they were found to be unreasonable, in the sense that no reasonable man could reasonably come to the conclusion. In this case, it was perfectly justified for the Industrial Court to take into consideration Wong's misconduct as a contributory factor towards the assessment of compensation. It was not only consistent with s 30(5) of the Act, which requires the Industrial Court to act

according to equity and good conscience, but it would also discourage unfair trade practice by motor insurance executives. A

(2) The paramount function of the Industrial Court in a reference under s 20(3) of the Act, is to deal with the substantial merits of the case with urgency and without regard to technicalities. Thus, the Industrial Court should first determine whether the misconduct complained of was in fact committed by the workman, and if so, whether such misconduct could constitute just cause or excuse for the dismissal. The Industrial Court was not competent to declare the dismissal void on the ground that Hong Leong had failed to hold a domestic inquiry, which was a matter outside the terms of reference by the Minister. B C

(3) The Industrial Court is an independent statutory body capable of reaching a fair result by fair means on all matters referred to it. Therefore, if there had been a breach of natural justice by the employer at the initial stage, it could be cured at the rehearing by the Industrial Court. The Industrial Court had committed jurisdictional error when it held that Wong was dismissed without just cause or excuse purely on the basis of failure to hold a domestic inquiry. The omission to consider whether Wong's dismissal was with or without just cause or excuse, regardless of the initial breach to hold a domestic inquiry, was fatal. D E

(4) The principle that an initial breach of natural justice by the employer could be cured by the Industrial Court inquiry, applies to all cases, regardless of whether the claimant is an employee within the meaning of the Employment Act 1955. The statutory requirement of 'due inquiry' before dismissing an employee under s 14(1)(a) of the Employment Act 1955 does not excuse the Industrial Court from discharging its duty to enquire into the question of just cause or excuse as required by s 20 of the Act. F

[Bahasa Malaysia summary

Perayu ('Wong'), seorang pengurus tuntutan insurans dalam penggajian responden ('Hong Leong'), telah dipecat atas alasan bahawa beliau telah menyalah laku dengan menjual ranap motokar, yang bertentangan dengan peraturan Hong Leong. Selepas itu, suatu kes pemecatan salah telah dirujukkan oleh Menteri kepada Mahkamah Perusahaan di bawah s 20(3) Akta Perhubungan Perusahaan 1967 ('Akta itu'). Tanpa mempertimbangkan sama ada salah laku Wong tersebut boleh membentuk sebab atau alasan yang mencukupi bagi pemecatannya atau tidak, Mahkamah Perusahaan memutuskan bahawa pemecatan Wong adalah salah hanya atas alasan prosedur bahawa beliau tidak diberikan suatu peluang untuk didengar di sebarang siasatan domestik, bertentangan dengan terma kontrak penggajiannya. Mahkamah Perusahaan mengawardkan Wong pampasan sebagai ganti pengembalian balik jawatan, tetapi mengurangkan kuantum award akibat salah laku Wong tersebut. Hong Leong terkilan dengan seluruh award itu, sementara Wong tidak berpuas hati dengan pampasan yang telah dikurangkan itu. G H I

Mereka memohon kepada Mahkamah Tinggi untuk perintah certiorari untuk membatalkan award tersebut, tetapi kedua-dua permohonan telah ditolak. Kedua-dua pihak telah membuat rayuan.

Diputuskan, menolak rayuan Wong, dan membenarkan rayuan Hong Leong setakat membatalkan bahagian award yang memutuskan bahawa kegagalan Hong Leong untuk mengadakan siasatan menyebabkan pemecatan Wong tanpa sebab atau alasan yang adil:

(1) Dalam menjalankan rujukan kehakiman, adalah wajib supaya Mahkamah Tinggi tidak mengganggu pendapat Mahkamah Perusahaan melainkan jika pendapat tersebut adalah tidak munasabah, dalam erti kata bahawa tiada orang yang munasabah akan secara munasabahnya mencapai keputusan itu. Dalam kes ini, adalah amat patut untuk Mahkamah Perusahaan mengambilkira salah laku Wong sebagai suatu faktor penyumbang terhadap pentaksiran pampasan. Ia bukan sahaja adalah sejajar dengan s 30(5) Akta itu yang menghendaki Mahkamah Perusahaan untuk bertindak mengikut ekuiti dan dengan kemurnian, tetapi ia juga menawarkan hati eksekutif insurans motor daripada menjalankan amalan perdagangan yang tidak adil.

(2) Fungsi Mahkamah Perusahaan yang paling utama dalam suatu rujukan di bawah s 20(3) Akta itu ialah untuk mengendalikan merit penting kes dengan segera, tanpa menghiraukan perkara teknikal. Maka, Mahkamah Perusahaan harus pertama sekali menentukan sama ada salah laku yang diadukan itu sesungguhnya telah dilakukan oleh pekerja itu, dan jika ada, sama ada salah laku itu boleh membentuk sebab atau alasan yang adil untuk pemecatan. Mahkamah Perusahaan adalah tidak kompeten untuk mengisytiharkan bahawa pemecatan itu adalah tidak sah atas alasan bahawa Hong Leong gagal mengadakan siasatan domestik, yang merupakan suatu perkara di luar terma rujukan Menteri.

(3) Mahkamah Perusahaan ialah suatu badan statutori bebas yang boleh mencapai keputusan yang adil melalui cara yang adil mengenai kesemua perkara yang dirujukkan kepadanya. Lantaran itu, jika terdapat suatu perlanggaran keadilan asasi oleh majikan pada tahap yang awal, ia boleh diperbetulkan di pembicaraan semula oleh Mahkamah Perusahaan. Mahkamah Perusahaan telah melakukan kesilapan bidang kuasa apabila ia memutuskan bahawa Wong telah dipecat tanpa alasan atau sebab yang adil semata-matanya atas dasar kegagalan untuk mengadakan suatu siasatan domestik. Peninggalan untuk mempertimbangkan sama ada pemecatan Wong adalah dengan alasan atau sebab yang adil atau tidak itu membawa padah, tidak kira kegagalan untuk mengadakan siasatan domestik pada mulanya.

(4) Prinsip bahawa sesuatu perlanggaran keadilan asasi pada mulanya boleh diperbetulkan oleh siasatan Mahkamah Perusahaan, terpakai dalam kesemua kes, tidak kira sama ada seseorang pendakwa itu merupakan pekerja dalam maksud Akta Pekerjaan

1955 atau tidak. Syarat statutori 'siasatan yang perlu' sebelum memecat seseorang pekerja di bawah s 14(1)(a) Akta Pekerjaan 1955 tidak mengecualikan Mahkamah Perusahaan daripada menjalankan kewajipannya untuk menyiasat ke dalam soalan sebab atau alasan yang adil seperti yang dikehendaki oleh s 20 Akta itu.]

Notes

For cases on awards of the Industrial Court, see 8 *Mallal's Digest* (4th Ed) paras 695–707; [1989] Mallal's Digest 951; [1991] Mallal's Digest 951; [1991] Mallal's Digest 1283.

For a case on judicial review, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2091.

Cases referred to

Bromley London Borough Council v Greater London Council & Anor [1983] 1 AC 768; [1982] 1 All ER 153; [1982] 2 WLR 92 (folld)

Calvin v Carr & Ors [1979] 2 All ER 440; [1979] 2 WLR 755 (folld)

Chertsey Urban District Council v Mixnam's Properties Ltd [1965] AC 735; [1964] 2 All ER 627 (folld)

Cinnamond v British Airports Authority [1980] 2 All ER 368; [1980] 1 WLR 582 (folld)

Cropper v Smith (1884) 26 Ch D 700 (folld)

Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111 (refd)

Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129 (folld)

Griffiths (Inspector of Taxes) v JP Harrison (Watford) Ltd [1962] 1 All ER 909 (folld)

H Young & Co v The Mayor and Corporation of Royal Leamington SPA (1882–83) 8 App Cas 517 (refd)

Hochtief Gammon v Industrial Tribunal (1964) 51 AIR 1746 (folld)

Hotel Malaya Sdn Bhd & Anor v National Union of Hotel, Bar & Restaurant Workers & Anor [1982] 2 MLJ 237 (folld)

Leary v National Union of Vehicle Builders [1970] 2 All ER 713; [1970] 3 WLR 434 (not folld)

National Assistance Board v Wilkinson [1952] 2 QB 648; [1952] 2 All ER 255 (folld)

Schmidt v Secretary of State, Home Affairs [1969] 2 Ch 149; [1969] 1 All ER 904; [1969] 2 WLR 337 (refd)

Workmen of the Motipur Sugar Factory Pte Ltd v Motipur Sugar Factory Pte Ltd AIR 1965 SC 1803 (folld)

Legislation referred to

Employment Act 1955 s 14(1)

Industrial Relations Act 1967 ss 20, 20(3), 29, 30(3), (5)

Appeal from: Originating Motion No R8–25–132–90 (High Court, Kuala Lumpur) for Appeal No 02–525 of 1993 and Originating

A Motion No R8–25–137–90 (High Court, Kuala Lumpur) for Appeal No 02–533 of 1993

B Lobo (*Lobo & Associates*) for the appellant.
N Sivabalah (*Shearn Delamore & Co*) for the respondent.

B **Mohd Azmi FCJ** (delivering the grounds of judgment of the court): On a reference by the Minister under s 20(3) of the Industrial Relations Act 1967, the Industrial Court by its award No 305/90 dated 15 November 1990, found Wong Yuen Hock, an insurance claims manager of 12 years standing in the employment of Hong Leong Assurance Sdn Bhd, had been C dismissed without just cause or excuse on the sole ground of the failure of the employer to hold a domestic inquiry as required under the terms of Wong's contract of employment. In lieu of reinstatement, the court had awarded him compensation but the quantum was limited to one year's salary, totalling RM43,200 by reason of his contributory act of misconduct. By separate originating motion, both the employer and employee applied D to have the award quashed by certiorari. Hong Leong was aggrieved by the whole award, whilst Wong was dissatisfied with that part of the award which had reduced the compensation to one year's salary. The two related appeals arose from the decision of Abu Mansor J in dismissing both the applications. At both counsel's request, we agreed to hear Wong's appeal E first. After hearing submissions, we upheld the learned judge's order of dismissal of Wong's application for certiorari to quash the reduced award of compensation as we were not persuaded that the Industrial Court had exceeded or was acting without jurisdiction in finding Wong's involvement in the surreptitious way in which two motor wrecks had been sold. Nor could we accept the argument that such serious irregularities in the sales F could not constitute gross dereliction of duties in the motor insurance business. In exercising judicial review, the High Court was obliged not to interfere with the findings of the Industrial Court unless they were found to be unreasonable, in the sense that no reasonable man or body of men could reasonably come to the conclusion that it did, or that the decisions G of the Industrial Court looked at objectively, were so devoid of any plausible justification that no reasonable person or body of persons could have reached them (see Lord Denning's judgment in *Griffiths (Inspector of Taxes) v JP Harrison (Watford) Ltd* [1962] 1 All ER 909 at p 916), and judgment of Lord Diplock in *Bromley London Borough Council v Greater London Council & Anor* [1983] 1 AC 768 at p 821; [1982] 1 All ER 153 H at p 159; [1982] 2 WLR 92 at p 100).

In the result we were obliged to dismiss Wong's appeal against the High Court refusal to quash the reduced award. We only needed to add that in assessing compensation in lieu of reinstatement, it was the practice of the Industrial Court (so we were told) to take into consideration any I contributory misconduct of the claimant. We were of the opinion that such practice was perfectly justified in appropriate cases so that the employee's own misdemeanour or unsatisfactory conduct might be taken as a contributory factor towards the assessment of compensation for the wrongful dismissal. In our view, such practice was not only consistent with the

provision of s 30(5) of the Industrial Relations Act 1967, which requires the Industrial Court to act according to equity and good conscience when making its awards, but would also discourage unfair trade practices by motor insurance executives whereby a repairable insured car could be readily condemned as a wreck for the benefit of an interested party to the detriment of insurance companies.

Dealing now with Hong Leong's appeal against the principal award of wrongful dismissal, it is convenient to reproduce below the facts of the case as summarized by the Industrial Court award:

> The claimant, Wong Yuen Hock, was dismissed by his employer Hong Leong Assurance Sdn Bhd ('the company') with effect from 5 July 1986. He was claims manager at the material time drawing a basic salary of RM3,600 a month.
>
> The claimant's downfall began when a luxurious Mercedes Benz JAX 866 insured with the company was wrecked in an accident. Rumours were floating around that the claimant had purchased this wreck without the knowledge of the company; the initial sale to Foo Chin Chow Workshop being a mere conduit pipe through which the wreck passed into his hands. The company began investigations. The company then discovered that there were also irregularities in the sale of another Porsche wreck BBJ 925. It was an unwritten rule of the company that staff are prohibited from purchasing wrecks. The claimant was sacked ignominiously without as much as eliciting an explanation from him or affording him the right to be heard in a domestic inquiry, this being one of the terms and conditions of his contract of employment.
>
> The claimant's career with the company having foundered on these two wrecks *he has sought the aid of this court to be reinstated on the ground that his dismissal was without just cause or excuse.*
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> The narrative of the company's case began with the evidence of Adrian Loh Heong Chow (CW1,) the general manager of the company. He said that the claimant had committed serious irregularities in respect of the sale of these two wrecks and the company could no longer repose any trust or confidence in him. The company contends that the claimant's suspicious, surreptitious involvement in the sale of the two wrecks was a gross dereliction of his duties. (Emphasis added.)

The Industrial Court award tabulated seven separate bodies of evidence which amply demonstrated Wong's involvement in the purchase of the Mercedes Benz wreck, viz:

(1) The written offer of RM25,000 made by Foo Chin Chow Workshop for the purchase of the Mercedes wreck JAX 866 was in Wong's handwriting. He admitted this.

(2) The payment of RM25,000 was delayed for eight and a half months, which was again abnormal and irregular by reason of Wong's involvement in the purchase.

(3) Wong purchased spare parts for the Mercedes Benz.

(4) Wong proceeded to change the registration number of the wreck from JAX 866 to WBD 8082.

(5) Wong was seen driving this car.

(6) Wong was one of the two named drivers in the insurance proposal form.

(7) The Mercedes Benz, now WBD 8082, was parked in Wong's house.

On the sale of the Porsche wreck, the Industrial Court accepted evidence adduced on behalf of Hong Leong, that Wong was indeed involved in the sale of the wreck. The court rejected Wong's denial as it found that Wong's evidence 'was stained with lies'. It was the court's conclusion that the company had on the evidence established and proved on a balance of probabilities that Wong had committed irregularities in the sale of the two wrecks which was a gross dereliction of his duties, sufficient to constitute contributory conduct in assessing compensation in lieu of reinstatement.

It is important to observe that having found that Wong did commit the alleged misconduct, the view taken by the Industrial Court was that Wong's gross dereliction of duties against the unwritten rule of the company, was relevant only in so far as providing the grounds for the reduced compensation. The Industrial Court, however, omitted to consider the question of whether the proven misconduct could constitute sufficient cause or excuse for Wong's dismissal, as it was obviously preoccupied with the issue of jurisdiction brought about by the procedural breach of natural justice on the part of Hong Leong in failing to give Wong a pre-dismissal opportunity to be heard in a domestic inquiry. Thus, without going into the actual merit of the case as to whether there was just cause or excuse for the dismissal, the Industrial Court concluded that Wong's dismissal was wrongful, purely on ground of the procedural breach. It was never in dispute that Hong Leong had failed to hold a proper domestic inquiry as required by Wong's contract of employment. At p 10 of the award, the Industrial Court held:

> The practice of terminating a workman's employment by simply invoking a contractual provision of termination by notice without offering a reason for the dismissal at the time of termination and without affording the workman a reasonable opportunity of being heard is repugnant to principles of industrial jurisprudence. The non-disclosure of the reasons for terminating a workman's employment is unfair as a workman's case may not be referred to the Industrial Court and he may never know the precise reason for his dismissal.

Further, at p 20 of the award, the Industrial Court said:

> Bearing in mind the words of his Lordship Raja Azlan Shah CJ in *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129 that in our view s 20 'is deliberately couched in subjective terms' and the general legislative purpose of the Act, this court is of the opinion that in every contract of employment, there is an implied obligation on the employer to afford a workman a reasonable opportunity of being heard before he is dismissed. Failure to do so will render the dismissal procedurally unfair as every workman has a legitimate expectation that he would not be dismissed without hearing what he has to say. (*Schmidt v Secretary of State, Home Affairs* [1969] 2 Ch 149; [1969] 1 All ER 904; [1969] 2 WLR 337.)
>
> Notwithstanding the irregularities committed by the claimant, the failure of the company to afford the claimant a reasonable opportunity of being heard before terminating his dismissal is procedurally unfair and the dismissal

of the claimant, a dismissal without just cause and excuse. Further, failure of the company to institute an inquiry as provided by the terms and conditions of employment is a breach of contract and an unfair labour practice which also renders the dismissal of the claimant without just cause or excuse.

In this appeal, it was never in dispute that in whatever internal inquiry conducted by the management, Wong was never given an opportunity to be heard, which was in breach of cl L2 para 3 of the terms and conditions of Wong's appointment as an executive which inter alia required, 'Every company should hold an inquiry to determine disciplinary action against any staff. The staff concerned should be asked to give an explanation.'

Relying purely on the absence of a proper domestic inquiry, the Industrial Court would seem to conclude that the breach of natural justice without further ado rendered Wong's dismissal without just cause or excuse. At p 13 of the award, the Industrial Court stated:

> Counsel for the claimant relied on the case of *Workmen of the Motipur Sugar Factory Pte Ltd v Motipur Sugar Factory Pte Ltd* AIR 1965 SC 1803, a decision of the Supreme Court of India cited with approval by the Supreme Court of Malaysia in the *Dreamland* case [1988] 1 MLJ 111. In the *Motipur* case no inquiry was held as required by the Industrial Employment (Standing Order's Act 1946) before discharging 119 workmen. Wanchoo J stated:
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> > 'Where an employer has failed to make an inquiry before dismissing or discharging a workman it is open to him to justify his action before the tribunal by leading all relevant evidence before it. The entire matter would be open before the tribunal. It will have jurisdiction not only to go into the limited question open to a tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect or omission to hold an inquiry is merely that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out.'
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> The Supreme Court of Malaysia in the *Dreamland* case said:
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> > 'We have already considered the relevant passage in *Motipur*'s case and do not propose to say anything more beyond saying that it is in accord with our views of the law in the instant appeal.'
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> In the *Motipur* case, Wanchoo J said:
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> > 'If the inquiry is defective or if no inquiry has been held as required by the Standing Orders the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper.'

The Industrial Court sought to distinguish the facts in *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111 with the present case in this way:

> The *Dreamland* case with respect should however not be used with impunity as a licence to dismiss a workman without giving the workman a reasonable opportunity of being heard. Considering that not every representation that a workman is dismissed without just cause or excuse under s 20 of the Act

A is referred to the Industrial Court for adjudication, the need for an inquiry before dismissal assumes greater importance because only cases that are in fact referred to the Industrial Court receive the benefit of a full hearing envisaged in the *Dreamland* case. A significant fact to bear in mind is that s 14(1) of the Employment Act 1955 stipulates a 'due inquiry' before dismissal of an employee for misconduct and this court has consistently B held that a breach of this inquiry provision renders the dismissal void.

In an apparent disagreement with the principle enunciated by Wan Sulaiman FJ in *Dreamland*, the Industrial Court at p 12 of the award complained that it was for the employer 'to carry out and fulfil the contractual obligation of the company to hold the required inquiry', and it was 'grossly unfair' to C ask the Industrial Court to carry out this function.

In our view, it is important to distinguish between settlement of disputes under the Industrial Relations Act 1967, and ordinary master and servant disputes under the Employment Act 1955 and the common law. It is important to remind ourselves once again that as provided by the 1967 D Act itself, the Industrial Relations Act 1967 is:

> ... to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom.

E In the settlement of any difference or disputes between employers and workmen, the wide powers given to the Industrial Court under s 29 include, 'the expeditious determination of the matter before it' (sub-s (g)), and again s 30(3) provides:

> The Court shall make its award without delay and where practicable within F thirty days from the date of reference to it of the trade dispute or of a reference to it under section 20(3).

To avoid the Industrial Court from being bogged down, in extraneous matters and the niceties of the law, s 30(5) also provides: 'The court shall act according to equity, good conscience and substantial merits of the case G without regard to technicalities and legal form.'

It is therefore essential that when a reference is made under s 20(3), the paramount function of the Industrial Court is to deal with 'the substantial merits of the case, without regard to technicalities and legal form', in addition to determining the dispute with a sense of urgency.

H We did not share the view that *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129 and *Schmidt v Secretary of State, Home Affairs* [1969] 2 Ch 149; [1969] 1 All ER 904; [1969] 2 WLR 337 were the authorities for the proposition that the Industrial Court's function under a s 20 reference ended once a procedural breach of natural justice had been established. The threshold jurisdiction of the Industrial Court is conferred I by the Minister's reference under s 20 of the Industrial Relations Act 1967. Now, what is the function of the Industrial Court when hearing such a reference? In *Goon Kwee Phoy* (a case referred to by the Industrial Court), Raja Azlan Shah CJ (Malaya) speaking for the Federal Court held at p 136:

> We do not see any material difference between a termination of the contract of employment by the notice and a unilateral dismissal of a summary nature. The effect is the same and the result must be the same. Where representations are made and are referred to the Industrial Court for enquiry, *it is the duty of that court to determine whether the termination or dismissal is with or without just cause or excuse.* If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. *The proper enquiry of the court is the reason advanced by it and that court or the High Court cannot go into another reason not relied on by the employer or find one for it.* (Emphasis added.)

Again in *Hotel Malaya Sdn Bhd & Anor v National Union of Hotel, Bar & Restaurant Workers & Anor* [1982] 2 MLJ 237 at p 240, the same learned Chief Justice had this to say on the function of the Industrial Court:

> ... It exercises a quasi-judicial function. It gives a full reasoned judgment in the nature of an award (s 30). Its functions comprise an investigation of the facts, an analysis of the facts, findings of facts, and lastly, the application of the law to those findings.

In *Cropper v Smith* (1884) 26 Ch D 700 at p 710, Bowan LJ had this to say:

> ... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights.

Further, in *Hochtief Gammon v Industrial Tribunal* (1964) 51 AIR 1746 at p 1749, Gajendragadkar CJ, speaking in the Supreme Court held:

> In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate government by an order of reference passed under s 10. It is not open to the tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case.

On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal. In our opinion, there was no jurisdiction by the Industrial Court to change the scope of reference by substituting its own reason. In this particular case, it was clear from the award of the Industrial Court, that the reasons given by Hong Leong for the dismissal of Wong was based on the irregularities in the sale of the two motor car wrecks which the Industrial Court held to be a gross dereliction of Wong's duties. After being satisfied that Wong did commit the acts complained of, the Industrial Court ought to have gone further and determined whether such gross

dereliction of duties constituted just cause or excuse for the dismissal. Instead of determining the second issue, the Industrial Court would appear to have changed the scope of the reference by inquiring almost entirely on the question of whether there was a failure to hold a domestic inquiry, a reason not relied upon by the employer for the dismissal, and a matter quite outside the terms of reference by the Minister.

Thus, under s 20, it is incumbent for the Industrial Court to inquire into the issue of just cause or excuse on the merits, save perhaps when the reference itself by the Minister was challenged and held to be bad in law so as to deprive the court of threshold jurisdiction. In this particular case, there was no challenge on the threshold jurisdiction and as such, the failure to discharge its function under a s 20 reference was a jurisdictional error meriting interference by certiorari.

In *Calvin v Carr & Ors* [1979] 2 All ER 440; [1979] 2 WLR 755, two fundamental issues were dealt by the Privy Council regarding the decision of the steward inquiry which disqualified Mr Calvin as a jockey for one year, and the subsequent dismissal of his appeal by the Jockey Club Appeal Committee pursuant to the Australian Jockey Club Act 1873. Mr Calvin's argument was grounded on the fact that his purported disqualification by the stewards and the dismissal of his appeal were void on the grounds inter alia, that the stewards had in the first instance failed to observe the rules of natural justice or fairness, and their decision was therefore invalid, and that accordingly, the appeal committee had no jurisdiction to hear and determine the appeal from it. In rejecting both arguments and dismissing the appeal, the Privy Council, speaking through Lord Wilberforce after thoroughly examining its own decisions on the matter in Australia, Canada, England and New Zealand, held [1979] 2 All ER 440:

(1) A decision of an administrative or domestic tribunal reached in breach of natural justice was void rather than voidable, but until declared to be void by a competent body or court it was capable of having some effect or existence in law and could not be considered as being legally non-existent. Assuming the stewards' decision to be void, it was nevertheless a decision for the purposes of an appeal to the committee, which therefore had jurisdiction to entertain the appeal.

(2) There was no absolute rule that defects in natural justice at an original hearing could or could not be cured by appeal proceedings which had been correctly and fairly conducted. However, where a person had joined an organization or body and was deemed, on the rules of that organization and the contractual context in which he joined, to have agreed to accept what in the end was a fair decision, notwithstanding some initial defect, the task of the courts was to decide, in the light of the agreements made and having regard to the course of the proceedings, whether at the end of those proceedings there had been a fair result reached by fair methods. On the facts, those who took part in racing were deemed to have accepted the Rules of Racing and to be bound by the decisions of bodies set up under the rules, provided they received fair treatment and a consideration of their case on its merits. The appellant's case had received, overall, full and fair consideration and there was therefore no basis on which the court ought to interfere.

In the appeal before us, apart from the crucial question of whether the Industrial Court was a competent body to declare the dismissal null and void, our main concern was with the second decision in *Calvin* on whether the defect in natural justice by Hong Leong could or could not be cured by the inquiry in the Industrial Court.

In dealing with the second issue, the authorities seem to show that there are two categories of cases at each end of the spectrum with a third category occupying in between. The first involves cases where the rules provide for rehearing by the original body or some fuller or enlarged form of it, for example, rules and regulations of social clubs, where the first hearing is superseded by the second body. The second category is where the complainant has the right to nothing less than a fair hearing, both at the original and at the appellate stage.

Having regard to the objectives of the Industrial Relations Act 1967, we did not see why the reference under s 20 by the Minister in dismissal cases could not be considered as falling under the third or intermediate category, albeit closer to the first category as a rehearing of the dispute. As stated by Lord Wilberforce in *Calvin* [1979] 2 All ER 440 at p 447; [1979] 2 WLR 755 at p 765:

> ... no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi-judicial, can be 'cured' through appeal proceedings.

It is true that in *Leary v National Union of Vehicle Builders* [1970] 2 All ER 713 at p 720; [1970] 3 WLR 434 at p 443, Megarry J was of the following opinion:

> If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? ... As a general rule ... I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

But in disagreeing with the above statement, as being too broadly stated, Lord Wilberforce in *Calvin* held [1979] 2 All ER 440 at p 448; [1979] 2 WLR 755 at p 766:

> ... It affirms a principle which may be found correct in a category of cases; these may very well include trade union cases, where movement solidarity and dislike of the rebel, or renegade, may make it difficult for appeals to be conducted in an atmosphere of detached impartiality and so make a fair trial at the first (probably branch) level an essential condition of justice. But to seek to apply it generally overlooks, in their Lordships' respectful opinion, both the existence of the first category, and the possibility that, intermediately, the conclusion to be reached, on the rules and on the contractual context, is that those who have joined in an organization, or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect.

We were of the view that for the subsequent body to be able to 'cure' the original defect in natural justice, it is essential that the subsequent body is an impartial body and free from partiality, capable of arriving at a fair

decision. Unlike, for instance, in the case of Trade Union Appeal Committees, the Industrial Court is clearly an independent quasi-judicial statutory body capable of reaching a fair result by fair methods, notwithstanding some initial defect by Hong Leong in dismissing the appellant. The Industrial Court proceeding in dealing with dismissal cases by management under s 20 should therefore, in our opinion, be categorized under the 'intermediate category' of cases referred to in *Calvin*, wherein the Industrial Court should be capable of curing any procedural defect in natural justice at the management stage of the dismissal dispute.

In our opinion, *Dreamland* did not belittle the importance of complying with any statutory or contractual enquiry before dismissal in all master and servant cases outside the purview of the Industrial Relations Act 1967. What *Dreamland*, following the curable principle in *Motipur* and *Calvin* laid down, was that failure on the part of the employer to hold a proper domestic inquiry should not deprive the Industrial Court of jurisdiction nor excuse it from the obligation to hear the reference on its merits. We therefore could not find any reason to reject the two authorities. In any event, we held the view that once a case of wrongful dismissal had been properly referred by the Minister under s 20(3), the Industrial Court was seised with jurisdiction and was obliged under the Act to determine the dispute on its merits. Thus, even where there was a breach of contractual or statutory obligation to hold an inquiry, the Industrial Court should proceed to determine on the merits first, whether the misconduct complained of was in fact committed by the employee, and secondly, whether the nature and extent of the misconduct could constitute just cause or excuse for the dismissal.

Invariably, the hearing before the Industrial Court itself which indeed provides a better and impartial forum for the employee than most domestic tribunals, should be taken as sufficient opportunity for the employee to be heard to satisfy natural justice and thereby rectify any omission to hold any domestic inquiry. Indeed, the Minister's reference should be viewed as a hearing de novo by an independent statutory tribunal. In our view, this was a far cry from saying that a statutory or contractual requirement for a pre-dismissal inquiry could be totally ignored in all disputes involving master and servant, even though outside the parameter of s 20. In the circumstances, we failed to understand the complaint of the Industrial Court that for it to inquire into the merits the question of '*just cause or excuse*' would be '*grossly unfair*'. Carrying out one's function could not possibly be described as an unfair exercise.

Apart from the fact that the Industrial Court, being neither a superior court nor a court of record, had no power to declare any act null and void, it might be useful to note that a breach of natural justice might mean nothing if the failure complained of would not result in prejudice to the complainant or would have availed him nothing. Thus, in *Cinnamond v British Airports Authority* [1980] 2 All ER 368; [1980] 1 WLR 582, CA, though not a case of dismissal, six car-hire drivers were banned by the British Airports authority from entering Heathrow Airport London, without giving them an opportunity to be heard. In dismissing the appeal of the

car-hire drivers, Brandon LJ had this to say [1980] 2 All ER 368 at pp 376–377; [1980] 1 WLR 582 at p 593:

> The third question which was argued before us was that of natural justice. So far as that is concerned, I agree with what has been said by Lord Denning MR and Shaw LJ. I do not think that in the circumstances of this case there was any need to give these minicab drivers an opportunity to make representations to the authority before they issued the ban. The reason for the ban must have been well known when the letters were received. Any representations which were desired to be made could have been made immediately by letter. None were. The truth is that no representations other than representations which included satisfactory undertakings about future behaviour would have been of the slightest use.
>
> If I am wrong in thinking that some opportunity should have been given, then it seems to me that no prejudice was suffered by the minicab drivers as a result of not being given that opportunity. It is quite evident that they were not prepared then, and are not even prepared now, to give any satisfactory undertakings about their future conduct. Only if they were would representations be of any use. I would rely on what was said in *Malloch v Aberdeen Corp* [1971] 1 WLR 1578, first per Lord Reid at p 1582 and secondly per Lord Wilberforce at p 1595. The effect of what Lord Wilberforce said is that no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.

As indicated earlier, being a creature of statute, the Industrial Court could not decline jurisdiction conferred on it by the Minister's reference under s 20(3), unless the reference itself could be held to be void ab initio, resulting in lack of threshold jurisdiction on the part of the Industrial Court. Apart from that, the Industrial Court was clearly under a duty to determine the dismissal dispute on its merits. In our opinion, the effect of any breach of natural justice should benefit the workman and not the party in breach. Thus, where on the merits, the workman had clearly been dismissed with just cause or excuse, and natural justice had been sufficiently complied with by the Industrial Court, what real benefit would there be for him to be told that because of failure to hold a domestic inquiry, he had to go back and face an unhappy management, who as a matter of course, could remedy the procedural breach and dismissed him for the second time? We failed to see how such delay and duplicity of proceedings could be interpreted as contributing towards industrial peace and harmony, compared to the result achieved by *Dreamland*. As stated in the *Motipur* case:

> In principle there is no difference whether the matter comes before the tribunal for approval under s 33 or on a reference before s 10. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the employer would have to justify on facts as well that its order of dismissal or discharge was proper. A defective enquiry stands on the same footing as no enquiry. If the dismissal be set aside by the Industrial Tribunal only on the ground that the employer has dismissed his employee without holding an enquiry it would inevitably mean that the employer will immediately proceed to hold an enquiry and pass an order dismissing the employee once again. In this event, another industrial dispute would arise

A and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry.

In dismissing Hong Leong's application for certiorari to quash the principal award of the Industrial Court, Abu Mansor J adopted the entire reasoning B of the chairman and thus fell into similar error by stating:

> The court makes a finding, after perusing the whole of the award, that by not adhering to the terms of the claimant's contract of employment, there was flagrant breach of it by the employer by not having held an inquiry before his dismissal. The Industrial Court held on authorities that the decision to dismiss the claimant was unfair on the contractual context, since C he was not duly heard before his dismissal. The Industrial Court held that the failure to hold an inquiry is no mere technicality. This court can find no fault with the learned chairman's award when he found for the claimant that the failure of the company to institute an inquiry as provided under the terms and conditions of employment is a breach of contract and an unfair labour practice which renders the dismissal of the claimant without just D cause or excuse. The Industrial Court then went on to decide reducing the compensation he awarded. I have already dealt with this aspect of the Industrial Court judgment and said I am in full agreement.

It was therefore the function of the Industrial Court in this particular case to determine on the available evidence whether Wong had misconducted E himself by his involvement in the sales of the two motor car wrecks against the unwritten rules of Hong Leong which prohibited its staff from such activity. Since the answer was in the positive, the next question for the court to ask itself was whether such misconduct constituted a '*just cause*' or '*just excuse*' for the dismissal? It was not within the ambit of the reference for the Industrial Court to determine whether Hong Leong ought to be F punished for failing to hold a domestic inquiry. The Industrial Court was not competent to declare the dismissal void for failure to comply with the rules of natural justice. The very purpose of the inquiry before the Industrial Court was to give both parties to the dispute an opportunity to be heard irrespective of whether there was a need for the employer to hold a G contractual or statutory inquiry. We were confident that the Industrial Court as constituted at present was capable of arriving at a fair result by fair means on all matters referred to it. If therefore there had been a procedural breach of natural justice committed by the employer at the initial stage, there was no reason why it could not be cured at the rehearing by the Industrial Court.

H

The distinction sought to be made by the Industrial Court between *Dreamland* and the present case was founded on s 14(1) of the Employment Act 1955 which expressly required an inquiry before dismissal be conducted for employees whose monthly wage did not exceed RM1,250. Under the '*termination of contract for special reasons*', the original s 14(1) provided that, I 'An employer may terminate the contract of service of a labourer without notice on grounds of such labourer's misconduct'. The requirement of '*due inquiry*' by the employer for such dismissal without notice was first introduced by Parliament on *1 October 1971* vide Amendment Act A91/1971. The said requirement has been preserved by subsequent

amendments to s 14 vide Act A360/1976 and Act A497/1980. The present s 14(1)(a) provides:

> 14(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of service, after due inquiry —
>
> (a) dismiss without notice the employee;

The term '*employee*' is presently defined by s 2(1) vide Act A360/1976 to mean:

> ... any person or class of persons —
>
> (a) included in any category in the First Schedule to the extent specified therein; or
>
> (b) in respect of whom the Minister makes an order under subsection (3) or section 2A;

The first category of '*employee*' in para 2(1) of the First Schedule to the Act as amended by Act 716 wef 10 February 1989 reads:

> Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed one thousand two hundred and fifty ringgit a month.

In our view, the principle that an initial breach of natural justice by the employer could be cured by the Industrial Court inquiry, should not be grounded on whether the claimant was or was not an employee within the meaning of the Employment Act 1955. The curable principle must apply to all cases and must not depend on the salary of a workman. It would be intolerable to conclude that the defect was curable only where the employee earned more than RM1,250 per month.

On the issue of principle of construction to be applied on the application and effect of the words '*due inquiry*' in the amended s 14(1) of the Employment Act 1955, it is useful to refer to the principle laid down by the House of Lords in *H Young & Co v Mayor and Corporation of Royal Leamington SPA* (1882–83) 8 App Cas 517 at p 526. In that case Lord Blackburn said, 'We ought in general, in construing an Act of Parliament, to assume that the legislature knows the existing state of the law ...'.

Further, in *National Assistance Board v Wilkinson* [1952] 2 QB 648 at pp 658–659; [1952] 2 All ER 255 at p 259, which was quoted with approval by Lord Reid in the House of Lords in *Chertsey Urban District Council v Mixnam's Properties Ltd* [1965] AC 735 at p 751; [1964] 2 All ER 627 at p 631, Lord Goddard had this to say:

> ... but it may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares. In *Minet v Leman* (1855) 20 Beav 278, Sir John Romilly MR stated as a principle of construction which could not be disputed that:
>
> > '... the general words of the Act are not to be construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched.'

A Applying these principles of interpretation, we did not agree that Parliament, by introducing the right to an inquiry for certain categories of 'employees' in s 14(1)(a) of the Employment Act 1955, had intended to alter the policy of the law affecting 'workmen' under s 20 of the Industrial Relations Act 1967, unless specifically provided for or made abundantly clear by the B amending statutes. As such we did not consider favourably the argument that the jurisdiction and function of the Industrial Court 1967 under a s 20 reference had been or could be drastically changed by inference, by reason of the amendments to s 14(1) of the Employment Act 1955 by amending Acts A91/1971, A360/1976 and A497/1980. Parliament must be presumed to know the provisions of the industrial relations legislation when the said C amending Acts were legislated in 1971, 1976 and 1980.

In our opinion, it should be presumed that the legislature by amending s 14(1) of the Employment Act 1955, did not intend to make any alteration in the existing law as contained in s 20 of the Industrial Relations Act 1967. General words of a particular amending Act of Parliament are not to D be construed as to alter the existing policy of the law under the statute; much less the policy of the law under a completely different statute. The statutory requirement of '*due inquiry*' under s 14(1)(a) of the Employment Act 1955 in the absence of clear intention by Parliament could not in any way excuse the Industrial Court from discharging its duty to enquire into the question of 'just cause or excuse' as required by s 20, notwithstanding E the initial failure to hold a proper domestic inquiry.

For reasons already stated, we were of the view that the High Court ought to conclude that the Industrial Court had omitted to consider all relevant matters and committed jurisdictional error in its award when it held that Wong was dismissed without just cause or excuse purely on the F basis of failure to hold a domestic inquiry. The omission to consider on the merits whether Wong's dismissal was with or without just cause or excuse, regardless of the initial breach to hold a domestic inquiry, was fatal. Hong Leong's appeal was accordingly allowed but limited only to quashing that part of the award which held that the failure of Hong Leong to hold an inquiry ipso facto rendered Wong's dismissal without just cause or excuse. G To avoid further delay in the disposal of this case, there appeared to be hardly any reason to quash the other parts of the award regarding compensation in lieu of reinstatement. Wong himself in his own appeal had merely complained against the quantum of compensation which we had earlier dismissed.

H We ordered that the costs both here and below be awarded to the appellant and the deposit be refunded.

Order accordingly.

Reported by Prof Ahmad Ibrahim

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